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SAN BERNARDINO and SAMUEL  
7 FULLER

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10  
11 GALE SOSTEK; and HERB SOSTEK,  
12 Plaintiffs,  
13 vs.  
14 COUNTY OF SAN BERNARDINO;  
and DOES 1-10, inclusive,  
15 Defendants.  
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Case No. 5:23-cv-02236-MRA (MRWx)

**DECLARATION OF MICHELLE R.  
PRESCOTT IN SUPPORT OF  
DEFENDANTS' MOTION IN  
LIMINE NO. 2 TO EXCLUDE  
PLAINTIFF'S EXPERT DR. OMALU**

Trial Date: January 28, 2025

17 **DECLARATION OF MICHELLE R. PRESCOTT**

18 I, Michelle R. Prescott, declare:

19 1. I am an attorney at law licensed to practice before all the courts of the  
20 State of California and am a partner with Wesierski & Zurek LLP, counsel of record  
21 for Defendants, COUNTY OF SAN BERNARDINO and SAMUEL FULLER .

22 2. The following facts are within my own personal knowledge, except as  
23 to those matters stated to be on information and belief, which I believe to be true. If  
24 called as a witness, I could and would competently testify to these facts.

25 3. On October 7, 2024, the parties exchange initial expert disclosures,  
26 pursuant to the Court's Scheduling Order. [Doc. #50.]

27 4. Plaintiffs identified as expert witnesses Scott DeFoe and Dr. Bennet  
28

1 Omalu. (Attached hereto as Exhibit 1 is a true and correct copy of Plaintiffs' Initial  
2 Expert Disclosure.)

3 5. On October 8, 2024, the parties stipulated to modify the scheduling  
4 order and continue rebuttal expert disclosures to 10/28/24, expert discovery cut-off  
5 to 11/4/24, hearings on motions to 11/15/24, and *Daubert* motions to 12/13/24.  
6 (Doc. #58 & 59).

7 6. In order to protect Defendants' ability to take expert depositions if the  
8 stipulation were not granted, on October 25, 2024, Defendants served notice of  
9 taking deposition of Bennet Omalu M.D. on October 31, 2024. (Attached hereto as  
10 Exhibit 2 is a true and correct copy of the deposition notice.)

11 7. Settlement negotiations were still on going and the Board had not yet  
12 met to consider the demand. The parties agreed to stipulate to continue the rebuttal  
13 expert disclosures to 11/29/2024, and the expert discovery cut-off to 12/06/24,  
14 anticipating that the County Board would have considered the demand by those  
15 dates. (Doc. #60 & 61.)

16 8. On October 29, 2024, the parties agreed to postpone the taking of  
17 expert depositions while settlement negotiations were still ongoing. (Attached hereto  
18 as Exhibit 3, is a true and correct copy of the email exchange.)

19 9. The County Board is not scheduled to consider this matter until  
20 December 17, 2024. On November 13, 2024, Defense counsel informed Plaintiff's  
21 counsel of the delay. I discussed with plaintiff's counsel Eric Valenzuela that it  
22 might be a good idea to push out the rebuttal expert disclosures and expert discovery  
23 cut-off until after the Board had considered the settlement demand. Mr. Valenzuela  
24 agreed that might be a good idea, but a new stipulation was not filed at this time.

25 10. On November 29, 2024, Defendants made their rebuttal expert  
26 disclosures. On the same day, Defendants served deposition notices for Plaintiff's  
27 experts, setting their depositions for December 6, 2024. (Attached hereto as Exhibit  
28 4, is a true and correct copy of the deposition notices.)

1 11. On November 29, 2024, I informed Plaintiff's counsel if the deposition  
2 dates did not work we would reschedule, and reminded him we were willing to push  
3 out the discovery cut-off until after the Board meeting. (Attached hereto as Exhibit  
4 5, is a true and correct copy of the email.)

5 12. Plaintiffs never served objections to the expert deposition notices.

6 13. On December 5, 2024, emailed Plaintiff's counsel again and left a  
7 couple of phone messages advising him that the expert depositions were still on  
8 calendar for December 6, 2024, but that I would agree to stipulate to extend the  
9 deadline. (Attached hereto as Exhibit 6, is a true and correct copy of the email.)

10 14. On December 6, 2024, at 9:02 a.m. Plaintiff's counsel emailed me back  
11 that he would stipulate to continuing the expert discovery cut-off, and that his  
12 experts would not be appearing for the depositions. We agreed to discuss the  
13 possibility of a stipulation and other trial matters later that afternoon. Attached  
14 hereto as Exhibit 7, is a true and correct copy the email exchange.)

15 15. On December 6, 2024, I spoke with Plaintiff's counsel and agreed I  
16 would prepare a stipulation to push out the expert discovery cut-off, but that if the  
17 Court did not grant the request I would have to move to exclude Plaintiff's experts  
18 on the grounds the depositions were properly noticed within the discovery cut-off,  
19 and because Plaintiffs did not serve objections to the deposition notices.

20 16. On December 9, 2024, I filed a stipulation and proposed order  
21 requesting the expert discovery cut-off be continued to 12/20/2024 and the *Daubert*  
22 motion deadline be extended to 1/8/2025. (Doc.65). The Court denied the  
23 stipulation. (Doc. 66.)

24 17. Defendants will be prejudiced if they are not able to take the expert  
25 depositions. Defendants will be forced to cross-examine Plaintiffs' expert witnesses  
26 for the first-time during trial regarding the expert's opinions, the basis for those  
27 opinions and denied the opportunity to obtain documents supporting those opinions.

28 I declare under penalty of perjury under the laws of the State of California

1 that the foregoing is true and correct.

2 Executed on this 11th day of December, 2024, at Lake Forest, California.

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